

COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION OF KENTUCKY

In the Matter of:

Electronic Application of Pennyriple Regional)
Energy Agency for a Declaratory Order) Case No. 2023-00195
Regarding the Jurisdiction of the Public)
Service Commission)

APPLICATION FOR DECLARATORY ORDER

The Pennyriple Regional Energy Agency (“PREA”), by counsel, respectfully submits this Application, pursuant to 807 KAR 5:001, Section 19, for an order declaring that PREA is not a “utility” as defined by KRS 278.010(3) and, therefore, that the Commission does not have general jurisdiction over PREA’s rates and services. In support of this Application, PREA states as follows:

Factual Background

1. The full name and business address of PREA is the Pennyriple Regional Energy Agency, 234 S Ewing St, Guthrie, KY 42234. For the purposes of this matter, PREA can be reached through the email of the undersigned counsel at tosterloh@sturgillturner.com.

2. PREA is an interlocal agency created by the Cities of Guthrie and Trenton, Kentucky, pursuant to the Interlocal Cooperation Act, KRS 65.210 to 65.300.¹ It was created to utilize mutual advantages of the Cities to foster development in the region through the creation of a natural gas system.

¹ A copy of the Interlocal Agency Agreement is attached as Exhibit 1.

3. The region's access to natural gas supply is limited. Areas near Guthrie currently receive natural gas through a small pipeline from Clarksville, Tennessee. Recent development has virtually exhausted this supply, which inhibits industrial development and expansion by large gas users such as Novellis.

4. The Commonwealth has recognized the need for such a project through its allocation of \$30 million dollars to PREA in the budget adopted by the General Assembly in 2022.

5. PREA plans to construct an intrastate natural-gas pipeline, composed of a 16-inch line that will run for 53 miles along the I-24 corridor north of the Tennessee state line. PREA will not extend its pipeline into another state. PREA plans to have the pipeline in service by the end of 2025 or early 2026.

6. In addition to the pipeline, PREA will provide natural gas service to unserved and underserved areas of Todd, Christian, Trigg, Caldwell, and Lyon Counties, Kentucky. PREA plans to tap the Pipeline Company's 30-inch pipeline in Lamasco, Kentucky and to transport and sell gas along the 53-mile pipeline that will terminate in Guthrie, Kentucky.

Regulation and Enforcement of Safety Standards

7. PREA acknowledges that the Commission will regulate safety aspects of PREA's operations.

8. KRS 278.495(2)(a) authorizes the Commission to regulate the safety of natural gas facilities that are owned or operated by any city and "used to distribute natural gas at retail." This statutory section includes a "city" within its explicit terms.

9. In addition, KRS 278.495(2) authorizes the Commission to enforce the minimum safety standards adopted by the United States Department of Transportation (“USDOT”) pursuant to federal pipeline safety laws, 49 U.S.C. Section 60101, et seq.

10. The Commission has commonly held that Cities’ natural gas systems are subject to the Commission’s safety oversight.²

Regulation of Rates and Service

11. The statutory scheme set forth in KRS Chapter 278 for the Commission’s jurisdiction of rates and service of a utility does not provide for Commission regulation of PREA’s rates and service beyond regulation and enforcement of safety standards discussed above.

12. KRS 278.040 gives the Commission jurisdiction to regulate the rates and service of all “utilities” in Kentucky.³ The term “utility” is defined as “any person except . . . a city, who owns, controls, operates, or manages any facility used or to be used for or in connection with . . . the production, manufacture, storage, distribution, sale, or furnishing of natural or manufactured gas, or a mixture of same, to or for the public, for compensation, for light, heat, power, or other uses.”⁴

13. Pursuant to KRS 65.240, interlocal agencies like PREA may exercise and enjoy “any power or powers, privileges or authority” that the underlying municipalities likewise exercise.

² See, e.g., Order, *City of Augusta*, Case No. 2019-00188, 2021 WL 2322454 (Ky. PSC June 2, 2021); Order, *City of Drakesboro d/b/a Drakesboro Nat. Gas Company*, Case No. 2019-00065, 2021 WL 795440 (Ky. PSC Feb. 25, 2021); Order, *City of Liberty Gas Company*, Case No. 2017-00053, 2017 WL 2617956 (Ky. PSC June 13, 2017) (Ky. PSC July 12, 2017).

³ KRS 278.040.

⁴ KRS 278.010(3)(b).

14. Because an interlocal agency enjoys all privileges of its founding agencies, as an interlocal agency established by two Cities, PREA falls under the exemption to being classified as a “utility” under KRS 278.010(3).

15. A federal court has addressed a related argument on whether an interlocal agency comprised of counties would be entitled to sovereign immunity.⁵ In that case, four eastern Kentucky counties formed an interlocal agency, known as the “Multi-County Recreational Board.” The court held that the interlocal agency was cloaked with sovereign immunity.⁶ Logic dictates a similar result for PREA. If an interlocal agency comprised of county members retains sovereign immunity from its county parents, an interlocal agency comprised of City members should retain its exemption from Commission regulation from its City parents.⁷

16. Other circumstances exist that further support this determination. KRS 65.300 requires proposed interlocal agencies to obtain approval from state agencies over which the agency has power or control. As an example, Henry County Water District No. 2 sought Commission approval for an interlocal agency agreement with the City of Carrollton.⁸ In contrast, the Kentucky Municipal Energy Agency (“KyMEA”)—an interlocal agency comprised of at least eight municipal utilities who procure and purchase electricity from KyMEA—has never sought Commission approval for its interlocal agreement.

WHEREFORE, the Pennyrile Regional Energy Agency respectfully requests that the Commission an order declaring that PREA is not a “utility” as defined by KRS 278.010(3) and,

⁵ *Bretagne, LLC v. Multi-County Recreational Board, Inc.*, 467 F.Supp.3d 501 (E.D. Ky.2020)

⁶ *Id.* at 508-09.

⁷ See also OAG 79-502 (Sept. 18, 1979) (opining that an interlocal agency established by school boards would be subject to the doctrine of sovereign immunity).

⁸ Order, *Henry Cnty. Water District #2*, Case No. 2014-00191, 2014 WL 3735741 (Ky. PSC July 25, 2014)

therefore, that the Commission does not have general jurisdiction over PREA's rates and services.

Respectfully Submitted,

STURGILL, TURNER, BARKER,
AND MOLONEY, PLLC

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VERIFICATION

STATE OF KENTUCKY)
)
COUNTY OF TODD)

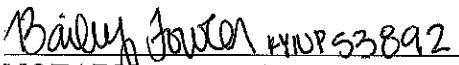
Eston Glover being duly sworn, deposes and says that he is the Chair of the Pennyriple Regional Energy Agency and that he has read the foregoing Application for Declaratory Order and knows the factual matters contained therein and that said matters are true and correct to the best of his knowledge and belief.



Eston Glover

Subscribed and sworn to before me, and for the above County and State, on this the 16^m day of June, 2023 by Eston Glover.

My Commission expires: June 20, 2026



NOTARY #110P53892

Exhibit 1

Interlocal Cooperation Agreement

**INTERLOCAL COOPERATION AGREEMENT CREATING THE
PENNYRILE REGIONAL ENERGY AGENCY**

THIS INTERLOCAL COOPERATION AGREEMENT made as of the 1st day of June, 2022, by the City of Guthrie, Kentucky and the City of Trenton, Kentucky (collectively the "Members").

WITNESSETH:

WHEREAS, municipalities and public agencies in the Pennyrile Region (as hereinafter defined) are faced with an ongoing challenge of assuring that the area's need for infrastructure systems and services will be developed and supplied; and

WHEREAS, municipalities and public agencies in the Pennyrile Region may need to develop infrastructure services and systems (hereinafter "Projects"), to meet the demands of Pennyrile residents and businesses; and

WHEREAS, mutual advantage may be obtained from the coordinated planning, permitting, acquisition, construction and operation of new and existing Projects; and

WHEREAS, pursuant to Sections 65.210 to 65.300 of the Kentucky Revised Statutes, as amended, known as the "Interlocal Cooperation Act" (the "Act"), public agencies are authorized and empowered to join with each other to make the most efficient use of their powers by enabling them to cooperate on a basis of mutual advantage; and

WHEREAS, in addition and supplemental to their other powers, the Members hereto are authorized and empowered by the Act to join with each other, and with other public agencies, to enter into an interlocal cooperation agreement creating an "interlocal agency" as defined in the Act, for the purposes of financing, acquiring, permitting, constructing, managing, operating, purchasing, utilizing, owning, distributing, transporting and storing systems of new and existing Projects for the benefit of Pennyrile residents and businesses;

WHEREAS, in the implementation of the Act, the undersigned parties may create a public agency for the accomplishment of the purposes thereof; and

WHEREAS, in addition and supplemental to their other powers, the undersigned parties, pursuant to the Act, are authorized and empowered to cooperate with each other on a basis of mutual advantage and thereby to provide resources, services and facilities in a manner and pursuant to forms of governmental organization that will accord best with geographic, economic, demographic, and other factors influencing the needs and development of local communities;

and

RECEIVED AND FILED

DATE 7/15/2022

MICHAEL G. ADAMS

SECRETARY OF STATE

COMMONWEALTH OF KENTUCKY

BY Sarah M. Binger

WHEREAS, mutual advantage can be obtained from the implementation of pooled financing or borrowing for such Projects to meet the needs of the Members (hereinafter defined) of the Pennyryle Regional Energy Agency created hereby, including financing alternatives and flexibility that might not otherwise be available to them individually; and

WHEREAS, the Governing Body, as herein defined, of each of the Initial Members has duly adopted a resolution approving this Agreement and authorizing the applicable Initial Member to become a party to this Agreement pursuant to the Act.

NOW THEREFORE, for and in consideration of the mutual covenants herein set forth and other good and valuable consideration, the receipt of which is hereby acknowledged by each party, the parties hereto mutually covenant and agree that this Interlocal Cooperation Agreement (the "Agreement") is entered into pursuant to the Act, and the parties hereto further covenant and agree:

**ARTICLE I
ESTABLISHMENT OF INTERLOCAL AGENCY**

Section 1.01. Establishment of Interlocal Agency. An interlocal agency, constituting a legal public agency with the purposes and powers hereinafter set forth, is hereby created under the authority of the Act, to be known as the Pennyryle Regional Energy Agency (hereinafter referred to as the "Agency"). The undersigned parties and any other public agencies added as parties to this Agreement in accordance with Section 7.08 hereof shall be known as the "Members" of the Agency.

Section 1.02. Location. The principal office of the Agency in Kentucky initially shall be located in Elkton, Kentucky. The Board of the Agency may change the location of the principal office in Kentucky and/or establish such other offices either within or without the Commonwealth of Kentucky as it deems appropriate.

Section 1.03 Nature of the Agency and this Agreement. (a) The Agency shall be an interlocal agency created by this Agreement pursuant to the Act. The Agency is not intended to be, shall not be deemed to be, and shall not be treated as, a general partnership, limited partnership, joint venture, corporation, investment company, joint stock association, joint stock company or common law trust.

(b) The relationship of the Members to the Agency shall be solely in their capacity as Members in accordance with the rights conferred upon them herein. The Agency is formed to allow the Members to effectively collaborate to do all things necessary or convenient to provide Projects for the benefit of Pennyryle residents and businesses.

(c) This Agreement is an agreement for a perpetual term.

Section 1.4 Definitions. As used in this Agreement, the following terms shall have the following meanings unless the context hereof otherwise requires:

"Act" shall mean the Interlocal Cooperation Act, Sections 65.210 through 65.300 of the Kentucky Revised Statutes.

"Agency" shall mean the Pennyryle Regional Energy Agency created pursuant to the Act and this Agreement.

"Agreement" shall mean this Agreement as amended, restated or modified from time to time. References in this Agreement to "Agreement", "hereof", "herein", "hereby" and "hereunder" shall be deemed to refer to the Agreement and shall not be limited to the particular text, article or section in which such words appear.

"Board" or *"Directors"* shall mean the individuals selected to manage the Agency pursuant to Article III herein.

"Governing Body" shall mean the legislative body of a Member.

"Initial Members" shall mean City of Guthrie, Kentucky and the City of Trenton, Kentucky, which public agencies initially formed the Agency by the execution and adoption of this Agreement.

"Laws" shall mean common law and all ordinances, statutes, rules, regulations, orders, injunctions, decisions, opinions or decrees of any government or political subdivision or agency thereof, or any court or similar entity established by thereof.

"Members" shall mean the Initial Members and the Public Agencies that adopt this Agreement pursuant to Section 7.08 hereof.

"Natural Gas System" means the acquisition, construction, installation and operation of certain joint distribution systems for natural gas and any and all facilities, including all equipment, structures, machinery, and tangible and intangible property, real and personal, for the distribution, storage or transmission of natural gas.

"Person" shall mean and include individuals, corporations, limited partnerships, general partnerships, joint stock companies or associations, joint ventures, associations, companies, trusts, banks, trust companies, land trusts, business trusts or other entities (whether or not legal entities) and governments and agencies and political subdivisions thereof.

"Pennyryle Region" shall mean area known as the Pennyryle region in the Commonwealth of Kentucky and the State of Tennessee, and adjoining areas.

"Project" shall mean infrastructure services and systems, including but not limited to transportation systems, broadband, renewable energy projects, Natural Gas Systems, energy related projects and utilities services that serve a public purpose.

"Public Agencies" shall have the same meaning as set forth in Section 65.230 (3) of the Act.

ARTICLE II PURPOSES AND POWERS OF THE AGENCY; AGENCY PROJECTS

Section 2.01. General. The Agency is formed to allow the Members to effectively collaborate to do all things necessary or convenient to serve the current and future needs of the Members to acquire, construct and install Projects for the benefit of residents and business in the Pennyrile region of the Commonwealth and surrounding states and to otherwise provide assistance to the Members related to the development of a Natural Gas System. The Agency may do and perform such acts and things as in its sole judgment and discretion are necessary and proper for conducting the affairs of the Agency or promoting the interests of the Agency and its Members. The enumeration of any specific power or authority herein shall not be construed as limiting the aforesaid general power or authority or any specific power or authority. The Agency may exercise any power authorized and granted to it by this Agreement.

Section 2.02. Powers of the Agency. In order to carry out the purposes of the Agency set forth herein, the Agency shall have the following powers:

- (a) Acquire, construct, develop, purchase, plan, lease, own, assign, sell, create, expand, transmit, finance or operate its Projects;
- (b) Sue and be sued, complain and defend any action in its name;
- (c) Purchase, receive, lease, or otherwise acquire, own, hold, improve, use and otherwise deal with, real or personal property, or any legal or equitable interest in property, wherever located;
- (d) Sell, convey, mortgage, pledge, lease, exchange, and otherwise dispose of all or any part of its property;
- (e) Make contracts and guarantees, incur liabilities, borrow money, issue its notes or bonds, to the extent permitted by law, to finance the cost or operation of its Projects or for any other purpose of the Agency, and secure any of its obligations by mortgage or pledge of any of its property or income;
- (f) Be a promoter, partner, member, associate, or manager of any public partnership, joint public venture, public trust, or other public entity;

(g) Appoint or hire officers, employees and agents of the Agency, define their duties, and fix their compensation;

(h) Transact any lawful business that will aid the purpose of the Agency in providing assistance and Projects to its Members;

(i) Make payments or donations, or do any other act, not inconsistent with law, that furthers the business and affairs of the Agency;

(j) Enter into all other contracts necessary or convenient in connection with any Project undertaken by the Agency or in connection with the services it provides to its Members;

(k) Issue bonds or notes to finance or refinance the cost or operation of its Projects or for any other lawful purpose of the Agency or incur debts, liabilities, or obligations, including but not limited to, bank or governmental loans, which do not constitute debts, liabilities or obligations of the Members;

(l) Invest money of the Agency not required for immediate use, including proceeds from the sale of any bonds, in such obligations, securities, and other investments as authorized by applicable law and any applicable provisions of any bond resolution or other instruments governing the fund or funds in which such money is deposited;

(m) Establish, operate and manage a pooled purchasing, financing or loan Program for utilization by the Agency or one or more of its Participants;

(n) Grant liens or mortgages or otherwise pledge, assign, or encumber all or part of its property, assets, contractual rights and interests, and all or part of the revenues and receipts therefrom, whether then owned or thereafter acquired;

(o) Receive and accept from the federal government, the Commonwealth, or any other public agency grants for or in aid of the operation of any Program or the construction of any Project, and receive and accept aid or contributions from any source of money, property, labor, or other things of value to be held, used, or applied for the purposes for which the grant or contribution is made.

(p) Procure insurance from such insurers as it deems desirable, to establish self-insurance, to otherwise establish a Project to provide insurance for the Agency and/or its Members, its officers and directors or any combination thereof to insure against any losses or claims in connection with the activities, property, operations or assets of the Agency, its Members or its officers and directors;

(q) Exercise any power, privilege or authority necessary or desirable to further the purposes of the Agency and which the Members might exercise in their individual capacities; and

(r) To undertake or participate in any other lawful activity.

Nothing in this Section 2.02 shall be interpreted to limit the powers of the Agency to provide its Members with other resources, services or benefits.

Section 2.03. Implementation of Services with Members. In exercising its powers to provide residents and businesses in the Pennyriple Region with various resources, services and/or benefits, the Agency may establish and enter into agreements:

- (a) to provide services to its Members and Pennyriple residents and businesses;
- (b) to establish, undertake and provide, from time to time, assistance or services for Members in developing Projects for Pennyriple residents and businesses;
- (c) to act as agent for its Members;
- (d) to establish credit and security arrangements with Members; and/or
- (e) to establish participation arrangements for Projects (hereinafter defined) undertaken by the Agency (a "Project Participation Agreement").

Section 2.04. Seal. The Agency shall have full and complete power to adopt and use a seal for the Agency, but, unless otherwise required by the Agency, it shall not be necessary for the seal to be placed on, and its absence shall not impair the validity of, any document, instrument or other paper executed and delivered by or on behalf of the Agency.

Section 2.05. Remedies. Notwithstanding any provision in this Agreement, when the Agency deems that there is a significant risk that an obligor to the Agency may default or is in default under the terms of any obligation to the Agency, the Agency shall have full and complete power to pursue any remedies permitted by Law, which, in its sole judgment, are in the interests of the Agency and its Projects, and the Agency shall have full and complete power to enter into any investment, commitment or obligation of the Agency resulting from the pursuit of such remedies as is necessary or desirable to dispose of property acquired in the pursuit of such remedies.

Section 2.06. Further Powers. The Agency shall have full and complete power to take all such actions, do all such matters and things and execute all such instruments as the Board deems necessary, proper or desirable in order to carry out, promote or advance the interests and purposes of the Agency or any Project, although such actions, matters or things are not herein specifically mentioned. Any determination as to what is in the best interests of the Agency and

the Projects undertaken by the Board in good faith shall be conclusive. In construing the provisions of this Agreement, the presumption shall be in favor of a grant of power to the Agency. The Agency shall not be required to obtain any court order to deal with its property.

Section 2.07. Compliance with Laws. The Directors shall at all times exercise all powers granted hereunder in compliance with, and the operations of the Agency shall at all times be conducted in accordance with, the applicable Laws of the Commonwealth.

Section 2.08. Designation of Projects. To establish or undertake, from time to time, specific projects for the benefit of one or more of its Members (each a "Project"), the Board shall adopt a resolution authorizing said Project, designating it as a Project of the Agency, and identifying the Members who may be interested in participating in the Project.

If fewer than all of the Members of the Agency are interested in participating in a Project, a Project Committee shall be established in accordance with Section 3.05.

Unless a Member elects to participate in a particular Project, that Member shall not be liable to the Agency, any other Member of the Agency or any other person, company, organization or entity for the operation, maintenance, construction, development, acquisition, performance, funding, financing, costs, or expenses of the Project, or for claims, demands, causes of action, obligations or liabilities of any kind arising out of, or related to, the Project.

Section 2.09. Termination of Projects. No Project may be terminated, unless

(a) all bonds, notes or other evidences of indebtedness of the Agency with respect to such Project, and the interest thereon, have been paid or adequate provision for such payment made in accordance with the provisions of such bonds, notes or other evidences of indebtedness; and

(b) all contractual obligations undertaken by the Agency with respect to such Project and all liens, charges and encumbrances to which the property constituting a part of such Project is subject have been satisfied, released or adequately provided for in accordance with the terms of the instruments governing such matters.

After fulfillment of the foregoing requirements, all property, real, personal, tangible and intangible of the Agency constituting a part of such Project shall promptly be divided among and distributed to the Members participating in such Project in the proportion that each Member's participation in such Project bears to the participation of all Members participating in such Project or in such other manner as such participating Members shall agree.

Section 2.10. Indemnification. The Agency and the Members participating in a Project shall indemnify and hold harmless any Member not participating in the Project for any costs, expenses, claims, causes of action, obligations, or liability, financial or otherwise, which in any way arise out of or relate to such Project, including without limitation any attorney's fees and/or

defense costs. All costs, fees and expenses incurred by the Agency to indemnify or hold harmless non-participating Members shall be charged solely to the Members participating in the Project.

ARTICLE III ORGANIZATION OF THE AGENCY

Section 3.01. Board of Directors. The governing body of the Agency shall be the Board of Directors, the membership of which shall be determined as hereinafter provided. The number of Directors shall initially be seven (7) and shall thereafter be fixed from time to time by resolution of a majority of the voting Directors then in office, provided, however, that the number of voting Directors shall in no event be less than seven. Subject to additional Directors added to the Board as provided in this Section 3.01, the Agency shall be governed by a Board composed of the following:

- (a) one Director designated by the governing body of each Member of the Agency, who shall serve at the pleasure of the Member designating him;
- (b) the County Judge/Executive of Todd County or his designee, who shall serve as a Director for so long as the County Judge/Executive holds office; and
- (c) four at-large Directors, each of whom shall have his principal residence in Todd County, Kentucky, to be chosen by the governing bodies of the Members from a list of nominees of not less than three names submitted by the Board.

The four at-large Directors shall serve for a four-year term, with the first four at-large Directors to have pre-determined staggered terms to provide for an orderly rotation of directorships.

If a new Member is added to the Agency, the new Member shall appoint one Director designated by the governing body of the new Member, who shall serve at the pleasure of the Member designating him.

Section 3.02. Initial Directors. By the execution of this Agreement, the Members executing this Agreement appoint the following seven (7) individuals to serve as voting Directors until their successors shall have been elected and qualified:

Eston Glover	City of Guthrie Representative
Jonathan Stahl	City of Trenton Representative
Todd Mansfield	Todd County Judge/Executive
Jimmy Turner	At-large (initial term expires June 1, 2023)
Deana Power	At-large (initial term expires June 1, 2024)
Johnny Knuckles	At-large (initial term expires June 1, 2025)
Gary Traugher	At-large (initial term expires June 1, 2026)

The Directors of the Agency shall have the right immediately to transact business upon behalf of the Agency after this Agreement has been filed in the office of the Kentucky Secretary of State.

Section 3.03. Meetings. (a) Meetings of the Board shall be held from time to time upon the call of the Chairperson, the Vice Chairperson, the Secretary or any two Directors. Regular meetings of the Directors may be held without call or notice at a time and place fixed by the By-Laws or by resolution of the Directors. Notice of any other meeting shall be mailed or otherwise given not less than 24 hours before the meeting but may be waived in writing by any Director either before or after such meeting. Any notice required by the Kentucky Open Meetings Law (Kentucky Revised Statutes Sections 61.800 through 61.850) shall also be given. The attendance of a Director at a meeting shall constitute a waiver of notice of such meeting except where a Director attends a meeting for the express purpose of objecting to the transaction of any business on the ground that the meeting has not been lawfully called or convened. The Directors may act with or, if permitted by applicable Law, without a meeting. A quorum for all meetings of the Board shall be a majority of the Directors. Unless specifically provided otherwise in this Agreement, any action of the Agency may be taken at a meeting by a vote of a majority of the Directors present (a quorum being present) or, if permitted by applicable Law, without a meeting, by written consents of a majority of the Directors. Any agreement or other instrument or writing executed by one or more of the Directors or by any authorized Person shall be valid and binding upon the Agency when authorized or ratified by action of the Directors as provided in this Agreement.

(b) With a quorum present, which a majority of members thereof shall constitute a quorum, any committee of the Directors may act. Notice of such meeting, including such notice as may be required by the Kentucky Open Meetings Law (Kentucky Revised Statutes Sections 61.800 through 61.850), shall be given as provided in Section 3.03(a). Unless otherwise specifically provided in this Agreement, any action of any such committee may be taken at a meeting by vote of a majority of the members present (a quorum being present) or, if permitted by applicable Law, without a meeting, by written consent of a majority of the members.

(c) All or any one or more Directors may, if permitted by applicable Law, participate in a meeting of the Agency or any committee thereof by utilizing video conference, telephone or similar communications equipment by means of which all persons participating in the meeting, including members of the public, can see and/or hear each other and participation in a meeting pursuant to such communications shall constitute presence in person at such meeting. The minutes of any meeting of the Agency held by utilizing such communications equipment shall be prepared in the same manner as those of a meeting of the Agency held in person.

Section 3.04. Quorum and Voting. A quorum exists at any meeting of the Board when a majority of the Agency's Directors is present at such meeting. If a quorum exists, a majority vote of the Directors present shall be necessary to take any action. If a vote of greater than a

majority is required pursuant to this Agreement, the Bylaws or any resolution establishing a Project, the required supermajority shall be based on the number of Directors present.

Each Project Committee may establish its own formula for determining how participating Members shall be entitled to vote on matters relating to that Project.

All questions regarding matters relating to an approved Project, except as otherwise provided herein or in the resolution authorizing the Project, shall be decided by the Project Committee in accordance with any applicable Project Participation Agreement and other governing instruments. Within the decision-making process the individual needs and desires of the Members participating in the Project shall be given the strongest consideration consistent with the best interest of all Members of the Agency and all other Projects of the Agency.

Section 3.05. Project Committees. In order to facilitate the decision-making process for a Project, a Project management committee (a "Project Committee") for each Project shall be appointed by the Member Members in the Project. The Project Committee shall be composed of no more than one representative from each Member participating in each Project. Each Project Committee will meet as necessary to discuss questions involving the administration, management and operation of the Project and will make recommendations to the Board regarding the policy decisions to be made about the Project.

The Project Participation Agreement between the Agency and the participating Members will include a provision by which the participating Members recognize that the Board will be responsible for making any decisions regarding authorization of acquisition of, construction of, participation in, or financing of the Project.

Section 3.06. Executive and Other Committees. An Executive Committee consisting of the Chairperson, Vice Chairperson, and such other directors as are provided for in the Bylaws, shall hold and exercise such powers as are delegated to it by this Agreement, the Bylaws or in writing by the Board. The President of the Agency shall be an ex officio, non-voting member of the Executive Committee. The Board or the Executive Committee may create other committees and shall decide the manner in which such other committees shall conduct their business in accordance with the Bylaws.

Section 3.07. Resignations or Removal of Directors and Members of the Executive Committee. Any Director or Executive Committee member may at any time resign his or her position by the delivery of his or her resignation in writing to the Agency, or as otherwise provided in the Bylaws. Any such resignation shall be effective upon receipt, and acceptance thereof shall not be necessary to make it effective unless it so states. The term of any Director who resigns as provided in Section 7.09 hereof or who is removed as may be provided in the Bylaws shall immediately terminate, unless an alternate effective date of such resignation or removal is specified.

Section 3.08. Vacancies on the Board. Any vacancy on the Board, whose position is vacant by written notice to the Agency, shall be filled in accordance with this Agreement, by the respective governing body of the Member that designated the Director representing the Member, by the Todd County Judge/Executive if a designee is appointed by him, and for any at-large Director by the governing bodies of the Members. The filling of any vacancy on the Board shall be effective upon receipt of such notice.

Section 3.09. Bylaws. The Board shall adopt Bylaws governing rules of order and other subjects required for the orderly conduct of the Agency's business within 30 days of the first meeting of the Board.

ARTICLE IV OFFICERS OF THE AGENCY

Section 4.01. Designation and Qualification. The officers of the Agency shall consist of a Chairperson, a Vice Chairperson, a President, a Treasurer and a Secretary, and such other officers, including one or more additional Vice Chairperson, Assistant Treasurers, or Assistant Secretaries, as the Board may determine. The Chairperson and any Vice Chairperson shall be Directors, but other officers need not be a Director. A person may hold more than one office at the same time except that the Chairperson and the Secretary may not be the same person. The Treasurer and all Assistant Treasurers may be required to give the Agency a bond for the faithful performance of his duties in such sum and with such surety or sureties as shall be determined from time to time by the Board.

Section 4.02. Election and Term. All officers of the Agency shall be elected or appointed pursuant to the provisions of the Bylaws.

Section 4.03. Chairperson. The Chairperson shall preside at all meetings of the Board at which he is present. The Chairperson shall also have the powers and duties prescribed in the Bylaws and such other powers and duties as may be expressly assigned to him by the Board.

Section 4.04. Vice Chairperson. The Vice Chairperson shall have such powers and perform such duties of the Chairperson as may be assigned to them by the Board or the Vice-Chairperson and shall preside over meetings of the Board when the Chairperson is absent. In the event of the resignation, removal or incapacity of the Chairperson, the Vice Chairperson or, if there be more than one Vice Chairperson, the First Vice Chairperson, shall have and exercise all the power and duties of the Chairperson until such time as the Chairperson is able to resume his duties or until such time as a new Chairperson is elected by the Board.

Section 4.05. Treasurer and Assistant Treasurers. The Treasurer shall have, subject to the Bylaws or the direction of the Board, general charge of the funds and financial affairs of the Agency and shall require to be kept full and accurate records thereof. He, or in his absence, the Assistant Treasurer, if any, shall render to the Board and the Executive Committee, at their

regular meetings and such other times as they may determine, a statement of the financial condition of the Agency and a report of the financial transactions of the Agency. In the event of the resignation, removal or incapacity of the Treasurer, the Assistant Treasurer, if any, or if there be more than one, the First Assistant Treasurer, shall have and exercise all powers and duties of the Treasurer until such time as the Treasurer is able to resume his duties or until such time as a new Treasurer is elected by the Board.

In addition to the foregoing, any Assistant Treasurers shall be assigned such duties and powers of the Treasurer as the Board and/or the Executive Committee may determine.

Section 4.06. Secretary and Assistant Secretaries. The Secretary, or in his absence, the Assistant Secretary, if any, shall attend all meetings of the Board and shall record the proceedings thereof in books provided for that purpose. He shall notify the Directors of their meetings in accordance with the provisions of this Agreement and the Bylaws. In the event of the resignation, removal or incapacity of the Secretary, the Assistant Secretary, if any, or if there be more than one, the First Assistant Secretary, shall have and exercise the powers and duties of the Secretary until such time as the Secretary is able to resume his duties or until such time as a new Secretary is elected by the Board.

In addition to the foregoing, any Assistant Secretaries shall be assigned such duties and powers of the Secretary as the Board and/or the Executive Committee may determine.

Section 4.07. President. The Board may employ and appoint a principal executive and administrative officer of the Agency, who shall serve as the President of the Agency. The President shall have such powers and perform the duties as may be assigned to him by the Board or Directors. The Board may authorize the President to sign and execute deeds, mortgages, deeds of trust, notes, bonds, checks, contracts or other instruments unless the signing and execution thereof has been expressly delegated by the Board or by this Agreement or the Agency's Bylaws to some other officer or agent of the Agency or is required by law to be otherwise signed or executed. The President shall serve as an ex officio, non-voting member of the Board and the Executive Committee.

Section 4.08. Resignation. Any officer may at any time resign his office by the delivery of a resignation in writing to the Agency. Such resignation shall be effective upon receipt, and acceptance thereof shall not be necessary to make it effective unless it so states.

Section 4.09. Removal of Officers. Any officer may be removed from office at any time by the Board in accordance with the Bylaws.

ARTICLE V LIMITATIONS OF LIABILITY

Section 5.01. Liability to Third Persons. No Member shall be subject to any personal liability whatsoever, in tort, contract or otherwise to any other Member or Person in connection with the affairs of the Agency or its Projects; and no Director, officer, employee or agent of the Agency shall be subject to any personal liability whatsoever in tort, contract or otherwise, to any Member or any other Person in connection with the affairs of the Agency or its Projects, except that each shall, to the extent permitted by law, be personally liable for his bad faith, willful misconduct, gross negligence or reckless disregard of his duties or for his failure to act in good faith in the reasonable belief that his action was in the best interests of the Agency and all such other Persons shall look solely to the Agency's property for satisfaction of claims of any nature arising in connection with the affairs of the Agency or the Projects. If any Director, officer, employee or agent of the Agency or any Member or any Public Agency participating in any Project, as such, of the Agency is made a party to any suit or proceedings to assert or enforce any such liability, he shall not on account thereof be held to any personal liability.

Section 5.02. Liability to the Agency or to the Members. No Director, officer, employee or agent of the Agency shall be liable to the Agency or to any Director, officer, employee or agent of the Agency or any Member or any Public Agency participating in a Project for any action or failure to act (including, without limitation, the failure to compel in any way any former or acting Director to redress any breach of his duties hereunder) except for his own bad faith, willful misfeasance, gross negligence or reckless disregard of his duties, provided, however, that the provisions of this Section 5.02 shall not limit the liability of any agent of the Agency with respect to breaches by it of any contract between it and the Agency.

Section 5.03. Indemnification. (a) The Agency shall indemnify and hold each Member harmless from and against all claims and liabilities, whether they proceed to judgment or are settled or otherwise brought to a conclusion, to which such Member may become subject by reason of its being or having been a Member, and shall reimburse such Member for all legal and other expenses reasonably incurred by it in connection with any such claim or liability. The rights accruing to a Member under this Section 5.03 shall not exclude any other right to which such Member may be lawfully entitled, nor shall anything herein contained restrict the right of the Agency to indemnify or reimburse a Member in any appropriate situation even though not specifically provided herein.

(b) The Agency shall indemnify each of its Directors and officers, employees and agents designated by the Agency to receive such indemnification, against all liabilities and expenses (including, without limitation, amounts paid in satisfaction of judgments, in compromise or as fines and penalties, and counsel fees) reasonably incurred by him in connection with the defense or disposition of any action, suit or other proceeding by the Agency or any other Person, whether civil or criminal, in which he may be involved or with which he may be threatened, while in office or thereafter, by reason of his being or having been such a

Director, officer, employee or agent, except as to any matter as to which he shall have been adjudicated to have acted in bad faith or with willful misfeasance or reckless disregard of his duties or gross negligence, provided, however, that the provisions of this Section 5.03 shall not be construed to permit the indemnification of any agent of the Agency with respect to breaches by it of any contract between it and the Agency; and further provided, however, that as to any matter disposed of by a compromise payment by such Director, officer, employee or agent, pursuant to a consent decree or otherwise, no indemnification either for said payment or for any other expenses shall be provided unless the Agency shall have received a written opinion from independent legal counsel, approved by the Agency, to the effect that if the foregoing matters had been adjudicated, the defenses that could have been presented on behalf of such Director, officer, employee or agent were meritorious. The rights accruing to any Director, officer, employee or agent under the provisions of this paragraph (b) of this Section 5.03 shall not exclude any other right to which he may be lawfully entitled; provided, however, that no Director, officer, employee or agent may satisfy any right of indemnity or reimbursement granted herein or to which he may be otherwise entitled except out of the Program Property, and no Member shall be personally liable to any Person with respect to any claim for indemnity or reimbursement or otherwise. The Agency may make advance payments in connection with indemnification under this paragraph (b) of this Section 5.03, provided that the indemnified Director, officer, employee or agent shall have given a written undertaking to reimburse the Agency in the event that it is subsequently determined that he is not entitled to such indemnification.

(c) Any action taken by, or conduct on the part of a Director, an officer, an employee or an agent of the Agency in conformity with, or in good faith reliance upon, the provisions of Section 5.07 hereof shall not, for the purpose of this Agreement (including, without limitation, Sections 5.01 and 5.02 and this Section 5.03) constitute bad faith, willful misfeasance, gross negligence or reckless disregard of his duties.

Section 5.04. Surety Bonds. No Director shall, as such, be obligated to give any bond or surety or other security for the performance of any of his duties.

Section 5.05. Apparent Authority. No purchaser, seller, transfer agent or other Person dealing with the Agency or any officer, employee or agent of the Agency shall be bound to make any inquiry concerning the validity of any transaction purporting to be made by the Agency or by such officer, employee or agent or make inquiry concerning or be liable for the application of money or property paid, transferred or delivered to or on the order of the Agency or of such officer, employee or agent.

Section 5.06. Recitals. Any written instrument creating an obligation of the Agency shall be conclusively taken to have been executed by a Director or an officer, employee or agent of the Agency only in his capacity as a Director under this Agreement or in his capacity as an officer, employee or agent of the Agency. Any written instrument creating an obligation of the Agency shall refer to this Agreement and contain a recital to the effect that the obligations thereunder are not personally binding upon, nor shall resort be had to the property of, any of the

Directors, officers, employees or agents of the Agency, or of any of the Members or of any of the Public Agencies participating in a Project, and that only the Project or a specific portion thereof shall be bound, and such written instrument may contain any further similar recital deemed appropriate; provided, however, that the omission of any recital pursuant to this Section 5.06 shall not operate to impose personal liability on any of the Directors, officers, employees or agents of the Agency or on any of the Members or on any of the Public Agencies participating in a Project.

Section 5.07. Reliance on Experts, Etc. Each Director and each officer of the Agency shall, in the performance of his duties, be fully and completely justified and protected with regard to any act or any failure to act resulting from reliance in good faith upon the books of account or other records of the Agency, upon an opinion of counsel or upon reports made to the Agency by any of its officers or employees or by the accountants, appraisers or other experts or consultants selected with reasonable care by the Agency or officers of the Agency.

Section 5.08. Waiver. Nothing in this Agreement shall be construed as constituting the waiver of any immunity from liability available to the Agency or the Directors, officers, employees or agents of the Agency or the Members or the Public Agencies participating in a Project pursuant to any applicable provision of Law.

ARTICLE VI CONTRIBUTIONS

Section 6.01. Contributions. The Board by resolution may from time to time adopt a schedule of assessments, or method for determining assessments relating to its operations. This Article V shall not prevent the adoption of operating budgets and budgets relating to expenses or bond proceeds or other budgets that relate to moneys other than moneys raised via assessments or the receipt of grants and contributions from other public agencies, any state or the federal government.

ARTICLE VII MISCELLANEOUS PROVISIONS

Section 7.01. Duration. The duration of the Agency shall be perpetual. This Agreement shall continue in full force and effect, subject to the right to rescind this Agreement and dissolve the Agency provided by Section 7.02 hereof, provided that all of the Agency's (i) bonds, (ii) notes, (iii) evidences of indebtedness, (iv) other obligations, including but not limited to those arising out of any purchase or sale agreements or other contractual obligations undertaken by the Agency, and (v) liens, charges and encumbrances to which property of the Agency is subject ("Agency Obligations") have been satisfied, terminated or cancelled in full or adequate provision for such satisfaction has been made in accordance with the instruments governing such Agency Obligations.

Section 7.02. Dissolution of the Agency. This Agreement shall continue in full force and effect, and the Agency shall continue to possess the powers herein conferred upon it, until the Members shall have rescinded this Agreement in accordance with this Article VII. Any such termination or rescission of this Agreement shall constitute a dissolution of the Agency. Termination or rescission of this Agreement may only be accomplished by a writing or writings executed by each Member and approved by resolution of each Member's governing body. In no event shall this Agreement or the powers herein granted to the Agency be terminated or rescinded until all Agency Obligations shall have been satisfied, released or adequately provided for.

Section 7.03. Liquidation. Upon dissolution of the Agency, the Board shall liquidate the business, assets and property of the Agency, as expeditiously as possible, and all property of the Agency, real, personal, tangible and intangible shall be distributed (a) in the case of property constituting a part of a Project of the Agency, to the Members participating in such Project and in the manner set forth in Section 2.08 hereof, and (b) in the case of all other property of the Agency, to the Members as determined and directed by the Board.; provided, however that net proceeds from the dissolution of a Project will be distributed in accordance with the resolution establishing such Project and other governing instruments or, in the absence of any such direction, by the determination and direction of the Project Committee.

Section 7.04. Annual Budget. The Board shall approve and adopt an annual budget of the Agency prior to the start of each fiscal year.

Section 7.05. Audit. The Board shall at least once per year cause an independent audit to be performed of the Agency's books and accounts by a certified public accountant.

Section 7.06. Effective Date. This Agreement shall be effective as to each Member immediately at such time as it is executed by authority of the governing body of such Member.

Section 7.07. Governing Law. This Agreement is executed by the Initial Members and delivered in the Commonwealth and with reference to the Laws thereof, and the rights of all parties and the validity, construction and effect of every provision hereof shall be subject to and construed according to the Laws of the Commonwealth. The provisions of this Agreement shall be given a liberal construction to effectuate its broad purposes.

The provisions of this Agreement are severable, and if the Agency shall determine, with the advice of counsel, that any one or more of such provisions (the "Conflicting Provisions") are in conflict with applicable federal or Kentucky Laws, the Conflicting Provisions shall be deemed never to have constituted a part of this Agreement; provided, however, that such determination by the Agency shall not affect or impair any of the remaining provisions of this Agreement or render invalid or improper any action taken or omitted (including, but not limited to, the election of Directors) prior to such determination.

Section 7.08. New Members. Any Public Agency meeting the requirements of the Act may become an additional Member of the Agency by (i) taking any appropriate official action to adopt this Agreement, (ii) furnishing the Agency with satisfactory evidence that such official action has been taken, and (iii) if requested by the Agency, providing the Agency with an opinion of counsel to the effect that such party desiring to become a Member of the Agency is a Public Agency. A copy of this Agreement may be adopted by executing a written instrument of adoption in such form as may be prescribed by the Agency. Delivering an acknowledged copy of such instrument shall constitute satisfactory evidence of the adoption contemplated by this Section 7.08.

Section 7.09. Resignation of Member. Subject to the fulfillment of all obligations it has undertaken as a Member or has otherwise agreed to with the Agency or other Members, any Member may resign its membership in the Agency, remove itself as a party to this Agreement and terminate its participation in this Agreement upon compliance with the following provisions:

(a) A Member wishing to resign from the Agency shall notify the Agency in writing of its intent to resign (the "Resignation Notice"). Such Resignation Notice shall be delivered to the Agency and each of the others Members not less than one (1) year prior to the requested effective date contained in the Resignation Notice. No Member's resignation shall become effective unless and until it has discharged its Resigning Member Obligations as defined in this Section 7.09.

(b) No later than one hundred eighty (180) days after receipt of the Resignation Notice, the Treasurer of the Agency shall issue a report to the Board listing (i) the interest of the resigning Member in Agency Projects; (ii) the liabilities, indebtedness, responsibilities, duties, contractual obligations and/or rights of the resigning Member in any Agency Project; (iii) any other indebtedness or obligations owed to the Agency or to other Members by the resigning Member as a result of being a Member of the Agency; and (iv) any other contractual or other obligations the resigning Member has undertaken related to the Agency or its Members or its activities (the "Resigning Member Obligations").

(c) Upon the fulfillment and payment of, or the establishment of adequate provision for such fulfillment and payment of, all Resigning Member Obligations, as determined by the Board and in accordance with all governing instruments, the Agency shall enter into a written disjoinder of parties agreement with the resigning Member, and the resignation of the resigning Member from the Agency shall become effective upon the execution of the disjoinder agreement.

(d) Resignation by any Member shall not limit, negate or affect in any way the resigning Member's right to indemnification from the Agency or any Members as described and set forth in Section 2.10 of this Agreement. Furthermore, resignation by any Member shall not limit, negate or affect in any way the resigning Member's

obligation to provide indemnification as described and set forth in Section 2.10 of this Agreement.

Section 7.10. Gender; Section Headings. (a) Words of the masculine gender shall mean and include correlative words of the feminine and neuter genders and words importing the singular number shall mean and include the plural number and vice versa.

(b) Any headings preceding the texts of the several Articles and Sections of this Agreement and any table of contents or marginal notes appended to copies hereof, shall be solely for the convenience of reference and shall neither constitute a part of this Agreement nor affect its meaning, construction or effect.

Section 7.11. Amendments. Amendment of this Agreement shall require a two-thirds ($\frac{2}{3}$) majority vote of the total numbers of Directors of the Agency; provided that a copy of all proposed amendments to be considered at any meeting of the Board must have been delivered to each Director not less than ten (10) days prior to the meeting at which any proposed amendment shall be submitted to a vote.

Section 7.12. Statutory References. All references in this Agreement to statutes of the Commonwealth of Kentucky shall be deemed to refer to such statutes as presently enacted or hereafter amended and also to any statutes hereafter adopted by the Commonwealth of Kentucky amending, modifying, replacing or expanding the scope of such statutes.

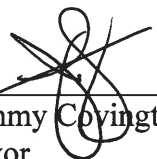
Section 7.13. Duplicate Originals. This Agreement may be executed in several counterparts, each of which will be an original but all of which together shall constitute one and the same instrument.

Section 7.14. Severability. In the event that any of the terms, covenants or conditions of this Agreement or their application shall be held invalid as to any person, entity or circumstances by any court having jurisdiction, the remainder of this Agreement and the application and effect of its terms, covenants or conditions to such persons, entities or circumstances shall not be affected thereby.


[Remainder of Page Intentionally Left Blank - Signature Pages Follow]

IN WITNESS WHEREOF, the City of Guthrie, Kentucky, pursuant to its authorizing resolution adopted on May 16, 2022, has hereunto entered into this Agreement this 16 day of May, 2022.

CITY OF GUTHRIE, KENTUCKY


By: 
Name: Jimmy Covington
Title: Mayor

Attest:

By: 
Name: Alison Blumel
Title: City Clerk/Treasurer

IN WITNESS WHEREOF, the City of Trenton, Kentucky, pursuant to its authorizing ordinance enacted on May 21, 2022, has hereunto entered into this Agreement this 24 day of May, 2022.

CITY OF TRENTON, KENTUCKY

By: 
Name: Martha Jo Ray
Title: Mayor

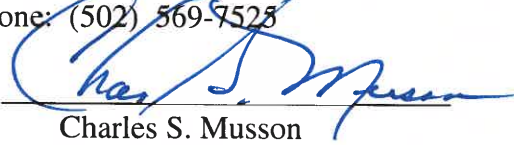
Attest:

By: 
Name: Carol Chester
Title: City Clerk/Treasurer

This instrument was prepared by:

Rubin & Hays
Kentucky Home Trust Building
450 South Third Street
Louisville, Kentucky 40202
Phone: (502) 569-7525

By

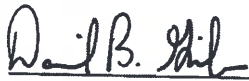
A handwritten signature in blue ink, appearing to read "Charles S. Musson", written over a horizontal line.

Charles S. Musson

INTERLOCAL COOPERATION AGREEMENT

ICA 22-019: The City of Guthrie, Kentucky and the City of Trenton, Kentucky for the Creation of the Pennyriple Regional Energy Agency

Reviewed as to compliance with KRS 65.210 to 65.300
And recommended for approval:



David B. Gibson
Staff Attorney
Department for Local Government

6/28/2022

Date

Approved:



Dennis Keene
Commissioner
Department for Local Government

6-29-2022

Date